

JAN 19 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MIGUEL RUIZ VIRRUETA*,

Defendant - Appellant.

No. 03-50161

D.C. No. CR-01-01145-AHM-2

MEMORANDUM**

Appeal from the United States District Court
for the Central District of California
A. Howard Matz, District Judge, Presiding

Submitted January 9, 2006***

Before: HUG, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

Miguel Ruiz Virrueta appeals from his 120-month sentence imposed following his guilty plea conviction to possession with intent to distribute

* The Clerk shall change the docket to reflect the correct spelling of appellant's name.

** This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

*** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

methamphetamine in violation of 21 U.S.C. § 841(a)(1). We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm.

Ruiz Virrueta contends that *United States v. Booker*, 125 S. Ct. 738 (2005), and *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005) (en banc) require that his case be remanded for resentencing because he was sentenced under the then-mandatory Sentencing Guidelines. This contention fails because Ruiz Virrueta was sentenced to the statutory mandatory minimum sentence under 21 U.S.C. § 841(b)(1)(A). *See United States v. Dare*, 425 F.3d 634, 643 (9th Cir. 2005) (declining to remand for resentencing because the outcome of resentencing “could not possibly be different” where a mandatory minimum sentence is imposed).

Ruiz Virrueta also contends that, because the Sentencing Guidelines are not mandatory, the sentencing judge can now ignore his criminal history points and provide the safety valve adjustment. This contention fails because *Booker* does not bear on the reduction of sentences. *See Booker*, 125 S. Ct. at 756. Also, the safety valve adjustment, which is governed by statute, prohibits a downward adjustment if the defendant has more than one criminal history point. *See* 18 U.S.C. § 3553(f)(1).

AFFIRMED.